

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MANFRED SCHMIDT

Appeal No. 2000-1712
Application No. 08/624,091

HEARD: May 22, 2001

Before CALVERT, COHEN and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claim 17, the only claim pending in this application. Claim 17 was amended subsequent to the final rejection (see Paper Nos. 13 and 14).¹

¹ The examiner has withdrawn the rejection under 35 U.S.C. § 112, first paragraph, set forth in the final rejection and, in light of the amendment of Paper No. 13, is no longer relying on the teachings of the Melton patent in rejecting the claim under 35 U.S.C. § 103(a) (answer, p. 2).

BACKGROUND

The appellant's invention relates to an extendible and retractable blind in combination with a multiple-glazed window. Claim 17, the only claim involved in this appeal, reads as follows:

17. An extendible and retractable blind in combination with a multiple-glazed window comprising a multiple-glazed window having at least two parallel spaced apart panes of glass hermetically sealed to each other to define an interior space between said panes of glass, a blind comprised of a film having a plurality of spaced apart parallel creases extending from one side edge of the film to an opposite side edge of the film, a multi-sided mandrel upon which said film is wound, support means for rotatably supporting said mandrel within said space between said panes of glass, electric motor means mounted within said space and operatively connected to said mandrel for rotating said mandrel, wherein said film has a thickness between 0.01 and 0.05 mm and said creases are provided at interval[s] of 7-20 mm.

According to appellant, a blind comprised of a film having a thickness between 0.01 and 0.05 mm would not perform satisfactorily without the creases. The creases lead to the formation of a wave profile, which in turn forms a roll with a cross-section similar in shape to a sprocket wheel and with its own torque when the blind is wound up. Further, the wave profile helps increase transverse stiffness and promotes the

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formation of a cushion of air between the blind and the glass,
which stops the blind from sticking to the pane of glass
(specification, p. 3).

The prior art references of record relied upon by the
examiner in rejecting the appealed claims are:

Trippner et al. (Trippner)	4,944,341	Jul. 31, 1990
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Henkenjohann (German document)	3045883	Aug. 7, 1982 ²
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Claim 17 stands rejected under 35 U.S.C. § 103(a) as
being unpatentable over Trippner in view of Henkenjohann.

Reference is made to the brief and reply brief (Paper
Nos. 19 and 21) and the answer (Paper No. 20) for the
respective positions of the appellant and the examiner with
regard to the merits of this rejection.

OPINION

In reaching our decision in this appeal, we have given
careful consideration to the appellant's specification and
claim 17, to the applied Trippner and Henkenjohann references,
and to the respective positions articulated by the appellant

² We derive our understanding of this reference from an English language
translation thereof, prepared by the Patent and Trademark Office, a copy of
which is appended hereto.

and the examiner. For the reasons which follow we cannot sustain the examiner's rejection.

Trippner discloses an extendible and retractable light guard device in the form of a shutter or a shade with a light guard sheet or web 2 in the space 1a between two panes 1 of an insulating glass window. The shutter 2 is wound around a cylindrical winding roller 3 and is extendible and retractable by an electric motor 3a also located between the panes. Trippner's shutter is not wound around a multi-sided mandrel and is not provided with creases, as called for in claim 17. Additionally, in that Trippner is silent with regard to the thickness of the shutter, Trippner provides no response for the limitation in claim 17 that the blind comprise a film having a thickness between 0.01 and 0.05 mm.

To overcome the above-noted deficiencies, the examiner relies upon the teachings of Henkenjohann of a pleated blind. According to the examiner, it would have been obvious to modify the shade material and arbor (winding roller) of Trippner to have a pleated shade and conforming arbor as taught by Henkenjohann (answer, p. 3). According to the examiner, "[t]he specific thickness and spacing of the pleats

are clearly obvious based on the particular application to the Trippner et al structure and environment" (answer, pp. 3-4).

Henkenjohann discloses a blind system that is attached just above or beneath a window frame 12. The blind system includes a winding shaft 10 formed with teeth 14 for winding a blind 13 formed with a corresponding zig-zag shape, with slats defined by folds 19. The blind 13 can be made of metal or plastic and has a thickness of approximately 0.1-0.3 mm, for example, 0.2 mm (translation, pp. 3 and 7). The blind protects against solar radiation and the entry of insects.

Even accepting the examiner's position that the combined teachings of Trippner and Henkenjohann would have suggested to one having ordinary skill in the art provision of creases or pleats on the Trippner shutter as proposed by the examiner, Trippner and Henkenjohann would not have suggested provision of a blind comprising a film having a thickness between 0.01 and 0.05 mm and creases at intervals of 7-20 mm wound upon a mandrel between window panes, as called for in claim 17. It is, in fact, this combination of features which results in a compact blind that can be accommodated, with its mandrel, between panes of windows with double or triple glazing wherein

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the available spacing is on the order of 16 to 22 mm and can be unwound and wound up tidily and accurately without sticking to the glass (specification, p. 2, lines 9-18; p. 3, lines 3-14; p. 6, lines 12-17).

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

The examiner asserts that the specific thickness of the blind and spacing of the pleats (creases) would have been obvious based on the particular application to the Trippner structure and environment but has not provided any evidence or rationale to support that assertion. In particular, we note that Trippner does not specify the diameter of the winding roll, the spacing between the panes of glass, or the length

and thickness of the shutter.³ Accordingly, it is not apparent to us how one having ordinary skill in the art would have arrived at the particular dimensions recited in claim 17 in the absence of appellant's disclosure. Thus, the examiner's determination that the particular film thickness and crease spacings recited in appellant's claim 17 would have been obvious appears to us to stem from a hindsight reconstruction of appellant's device.

Accordingly, we cannot sustain the examiner's rejection.

³ Appellant has explained on page 8 of the brief why a thin film having the thickness recited in claim 17 would not operate in Trippner's arrangement and thus would not have been considered suitable to one of ordinary skill in the art without an appreciation of the benefits of creases in overcoming the problems of thin films. The examiner has not responded with evidence that such a solution would have been appreciated by one skilled in the art at the time of appellant's invention.

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CONCLUSION

To summarize, the decision of the examiner to reject
claim 17 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
Administrative Patent Judge)	

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